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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

AMY REBECCA WEISS,

Cross-Complainant and
Respondent,

v.

KIM W. LU, Individually and as
Trustee, etc.,

Cross-Defendant and
Appellant.

B289899

(Los Angeles County
Super. Ct. No. BC667829)

APPEAL from an order of the Superior Court for Los Angeles
County, Mark V. Mooney, Judge. Affirmed.

Robert Miller for Cross-Defendant and Appellant.

Tabatabai & Miyamoto, Richard Miyamoto and Farzad Tabatabai
for Cross-Complainant and Respondent.

Cross-defendant Kim W. Lu, individually and as trustee of the Lindeva Living Trust dated 8/20/03 dba 510PacificAve, appeals from the denial of her special motion to strike the cross-complaint filed by Amy Rebecca Weiss. We conclude that Lu failed, both in the trial court and in this court, to address how the cross-complaint, or any of the causes of action alleged therein, arises from one of the categories of protected activity set forth in Code of Civil Procedure¹ section 425.16, subdivision (e). Accordingly, we affirm the trial court's order denying the special motion to strike.

BACKGROUND

Weiss is a tenant of an apartment in an eight-unit apartment building. The building is owned and operated by the Lindeva Living Trust, dated 8/20/03, Kim W. Lu, Trustee, under the registered fictitious name 510PacificAve. In July 2017, 510PacificAve filed a complaint against Weiss, her mother (who was the guarantor of Weiss's lease), and "John Doe," alleging various claims based upon allegations that Weiss and "John Doe" damaged two cameras that Lu had installed in common areas of the building.

Weiss filed a cross-complaint against Lu, individually and as trustee of the trust, alleging that Lu has engaged in serial harassment of Weiss through threats and menacing conduct. Specifically, the cross-complaint alleges the following conduct by Lu: (1) sending notices to tenants, including Weiss, that attempted to remove a grace period for

¹ Further undesignated statutory references are to the Code of Civil Procedure.

paying rent and to charge Weiss for costs to repair the property;

(2) installing 18 video surveillance cameras around the property, three of which are aimed at Weiss's windows and front door; (3) sending a notice to Weiss claiming she was responsible for damage to the property's roof and attempting to charge Weiss for its repair;

(4) screaming at tenants who complained to Lu about the video cameras and problems with the plumbing; (5) refusing to respond to Weiss's written request for repairs that needed to be made to her apartment, including the plumbing; (6) accusing Weiss of vandalism and threatening eviction; (7) refusing to take any action to end the unlawful short-term leasing of two units in the building, despite the disruption the short-term tenants caused to the other tenants of the building, including Weiss; (8) refusing to provide Weiss with surveillance footage for the camera pointed at the bicycle rack after Weiss's bicycle was stolen; (9) attempting to unilaterally change terms of the tenants' leases, including Weiss's lease, by amending the leases to prohibit advertising to lease or sublet the tenants' apartments and requiring any tenant who received funds resulting from an unauthorized sublease to disgorge those funds to Lu, and by attempting to insert a cap on attorney fees and costs allowed under the lease; and (10) taking action to terminate Weiss's tenancy in violation of the Los Angeles Rent Stabilization Ordinance, including by bringing an action to recover possession of Weiss's unit based upon facts that Lu has no reasonable cause to believe to be true.

Weiss alleges six causes of action. The first cause of action, for violation of Civil Code section 1940.2, alleges that Lu used or

threatened to use force, willful threats, and menacing conduct as described above for the purpose of influencing Weiss to vacate the apartment. The second cause of action alleges that Lu invaded Weiss's privacy by installing and aiming three cameras directly at Weiss's bedroom and living room windows and front door. The third cause of action alleges that Lu breached the covenant of quiet enjoyment by engaging in the conduct described above. The fourth cause of action alleges nuisance based upon Lu's installation of video surveillance cameras aimed at Weiss's apartment, and Lu allowing a constant influx of noisy short-term renters on the property. The fifth cause of action seeks an injunction against civil harassment based upon Lu's alleged stalking of Weiss through video surveillance and her sending notices and threatening to evict Weiss. Finally, in the sixth cause of action, Weiss alleges that Lu's intrusive conduct and failure to remove the defective and dangerous conditions on the property constituted intentional infliction of emotional distress.

Lu filed a special motion to strike the cross-complaint, and each of the six causes of action, under section 425.16, the so-called anti-SLAPP statute. We address the motion in more detail in the Discussion section below. The trial court denied the motion. The court observed that the special motion to strike was directed to the entire complaint, and if any cause of action survived, the motion had to be denied. The court found that the gravamen of the complaint, and all of the causes of action (except, possibly, two of the causes of action, although it was not clear by Lu's motion), did not involve conduct protected under section 425.16.

Lu timely filed a notice of appeal from the order denying her special motion to strike.

DISCUSSION

A. *Section 425.16 and the Standard of Review*

It repeatedly has been said that section 425.16 was enacted “to provide a procedural remedy to dispose of lawsuits that are brought to chill the valid exercise of constitutional rights.” (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1055-1056.) But the statute is not as broad as that statement suggests. Instead, a special motion to strike is limited to causes of action “against a person arising from any act of that person in furtherance of the person’s right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue.” (§ 425.16, subd. (b)(1).)

An “act in furtherance of a person’s right of petition or free speech under the United States or California Constitution in connection with a public issue” is defined in the statute as “(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of

petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.” (§ 425.16, subd. (e).)

A special motion to strike is similar to a motion for summary judgment in that the party bringing the motion must meet a threshold burden, and only if that burden is met does the burden shift to the opposing party. In the case of a special motion to strike, the moving party must show that the cause or causes of action “arises from” an act that falls within one of the four categories described in section 425.16, subdivision (e). (*Zamos v. Stroud* (2004) 32 Cal.4th 958, 965 (*Zamos*); *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67 (*Equilon*).) “As courts applying the anti-SLAPP statute have recognized, the ‘arising from’ requirement is not always easily met.” (*Equilon, supra*, 29 Cal.4th at p. 66.) “If the mention of protected activity is ‘only incidental to a cause of action based essentially on nonprotected activity,’ then the anti-SLAPP statute does not apply.” (*Baharian-Mehr v. Smith* (2010) 189 Cal.App.4th 265, 272.)

If the moving party meets their initial burden, the burden shifts to the opposing party to demonstrate a probability of prevailing on the claim, i.e., that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment. (§ 425.16, subd. (b)(1); *Zamos, supra*, 32 Cal.4th at p. 965.) If the moving party fails to meet his or her initial burden, the trial court need not address whether there is a probability that the opposing party will prevail on his or her claims. Instead, the special motion to strike must be denied. (*Aguilar v. Goldstein* (2012) 207 Cal.App.4th 1152,

1159.) We review the denial of a special motion to strike de novo.
(*Flatley v. Mauro* (2006) 39 Cal.4th 299, 325.)

B. *Application to this Case*

In her special motion to strike, Lu passed quickly over her initial burden. Rather than addressing each of the acts that formed the basis for each of Weiss's causes of action, Lu simply made general statements and citations to cases about the freedom of speech, the right not to speak, and the litigation privilege, and discussed a case involving the application of section 425.16 to causes of action based upon the filing of an unlawful detainer action. Lu then immediately proceeded to address Weiss's probability of prevailing as to each cause of action.

Although as part of her discussion regarding Weiss's probability of prevailing Lu made some references when addressing some of the causes of action to the acts that form the basis of those causes of action and how they were "protected" conduct, those references were perfunctory and conclusory, and did not address section 425.16, subdivision (e). For example, in her discussion of the first cause of action for violation of Civil Code section 1940.2, Lu stated: "Lu's declaration shows that any and all notices, lease modifications, and use of security cameras were protected by the prelitigation privilege of Civ. Code § 1940.2(c), Civ. Code § 47(b), and her constitutional right of free speech protection." In her discussion of the fourth cause of action for nuisance, Lu stated: "The gravamen of the nuisance alleged in the cross-complaint is speech flowing from the same protected and privileged notices, letters, and security cameras as discussed in the

prior causes of action.” Her discussion of the fifth and sixth causes of action (for civil harassment and intentional infliction of emotional distress) includes a similar statement: “Like the prior causes of action, the gravamen of the fifth [or sixth] cause of action is based [on] allegations about letters, notices, a text, and security cameras constituting protected and privileged speech or conduct.” None of those statements is sufficient to show that the gravamen of each (or any) of Weiss’s causes of action is based upon acts in furtherance of Lu’s right of petition or free speech as set forth in section 425.16, subdivision (e).

Lu’s discussion of the applicability of section 425.16 in her appellant’s opening brief fares no better. Although she sets forth the categories of conduct described in section 425.16, subdivision (e), she makes no effort to explain what conduct is alleged to form the basis of each cause of action, let alone how that conduct fits within one of those categories.

Because Lu failed to meet her initial burden in her special motion to strike, the trial court was required to deny the motion. (*Aguilar v. Goldstein, supra*, 207 Cal.App.4th at p. 1159.) Although we acknowledge that this was not the basis for the trial court’s denial of the motion, we are not bound by the trial court’s reasoning under the de novo standard of review applicable here. Accordingly, we affirm the trial court’s denial of Lu’s special motion to strike.

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DISPOSITION

The order denying Lu's special motion to strike is affirmed. Weiss shall recover her costs on appeal.

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WILLHITE, J.

We concur:

MANELLA, P. J.

COLLINS, J.